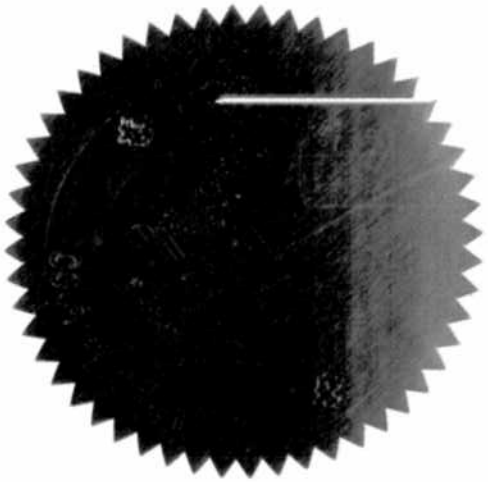

Court File No.: T-210-12

FEDERAL COURT

JENNIFER MCCREA AND CARISSA KASBOHM

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA AND THE CANADA EMPLOYMENT INSURANCE COMMISSION

Defendants

STATEMENT OF CLAIM TO THE DEFENDANTS (Proposed Class Proceeding)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Court Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: January 19, 2012

Issued by: Jeff Wells Registry Officer
(Registry Officer)

Address of local office: 180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: THE ATTORNEY GENERAL OF CANADA
234 Wellington Street
Bank of Canada
10th Floor
Ottawa, ON K1A 0G9

Tel: (613) 946-4755
Fax: (613) 954-1920

TO: THE CANADA EMPLOYMENT INSURANCE COMMISSION
c/o THE ATTORNEY GENERAL OF CANADA
234 Wellington Street
Bank of Canada
10th Floor
Ottawa, ON K1A 0G9

Tel: (613) 946-4755
Fax: (613) 954-1920

and

HUMAN RESOURCES & SKILLS DEVELOPMENT CANADA
EI Appeals Division
Place Vanier - Tower B / Tour B
11th Floor / 11e étage
355 North River Road
OTTAWA ON K1A 0L1

Christopher Wolfenden

Tel: (888) 632-3050
Fax: (613) 995-5008

CLAIM

1. The following terms used throughout this statement of claim have the meanings indicated:

(a) "**Attorney General**" means the defendant, the Attorney General of Canada;

(b) "**Class**" and "**Class Members**" mean all persons who, during the **Class Period**:

i. applied for and received **parental leave** benefits;

ii. suffered from an illness, injury, or disability during the course of their **parental leave**; and,

iii. EITHER

(1) applied for **sickness leave** benefits for which they were rejected because they were on **parental leave** or not otherwise available to work at the time of their **sickness leave** application;

or,

(2) were advised orally or in writing by the defendants, the **Commission**, or **HRSDC**, that they did not qualify for **sickness leave** because they were on **parental leave** or not otherwise available to work at the time of their **sickness leave** application, on which advice and representations they relied in not applying for **sickness leave**.

(c) "**Class Period**" means the period from March 3, 2002 to, and including, the date of trial of the present action;

(d) "**Commission**" means the Canada Employment Insurance Commission, a defendant in the present action and a body corporate continued by section 20 of the

Department of Human Resources and Skills Development Act, S.C. 2005, c. 34, and includes all agents, servants, employees, and assigns of the Canada Employment Insurance Commission;

(e) "***EI Act***" means the *Employment Insurance Act*, S.C. 1996, c. 23, as amended from time to time;

(f) "**HRSDC**" means the Department of Human Resources and Skills Development Canada established by the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, and includes all agents, servants, employees, and assigns of the Department of Human Resources and Skills Development Canada, and includes where material its predecessor, the Department of Human Resources established by the *Department of Human Resources Act*, S.C. 1996, c. 11;

(g) "**Kasbohm**" means Carissa Kasbohm, one of the plaintiffs;

(h) "**McCrea**" means Jennifer McCrea, one of the plaintiffs;

(i) "**parental leave**" means parental employment insurance leave or parental employment insurance benefits as set out in the ***EI Act***, and in particular Part I thereof;

(j) "**Rougas**" and **"Rougas Decision**" mean, respectively, Natalya Rougas and a June 30, 2011 decision of an Umpire under the ***EI Act*** on a claim for sickness leave benefits filed by Rougas, which Decision is cited as CUB 77039;

(k) "***Rules***" mean the *Federal Courts Rules*, SOR 98/106 established pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

(l) "**sickness leave**" means sickness employment insurance leave or sickness employment insurance benefits as set out in the ***EI Act***, and in particular Part I thereof; and,

(m) "**the 2002 amendment**" means an amendment to the ***EI Act*** which came into force on March 3, 2002 pursuant to the *Budget Implementation Act, 2001*, S.C. 2002, c. 9 (Bill C-49), and in particular Part 3 thereof.

2. The plaintiffs claim on their own behalf and on behalf of all Class Members:

(a) an order pursuant to the *Rules* certifying this action as a class proceeding and appointing them as the representative plaintiffs;

(b) a declaration that the defendants negligently administered and failed to implement the *EI Act* – including through negligent misrepresentations about the *EI Act* – in a manner that caused damage to the plaintiffs and Class Members, as particularized below;

(c) a declaration that the defendants were unjustly enriched by these actions, as particularized below, to the detriment of the plaintiffs and Class Members, and that there exists no juridical reason to allow the defendants to retain the amounts by which they were unjustly enriched;

(d) special damages and general damages for negligence, misfeasance, or unjust enrichment in the amount of $450,000,000.00 or such other sums as this court finds appropriate at the trial of the common issues or at a reference or references under the *Rules*;

(e) prejudgment interest on the amount set out in paragraph 2(d) at the rate of five per cent per annum pursuant to the *Interest Act*, R.S.C. 1985, c. I-15, or at a rate to be established by this Honourable Court pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;

(f) postjudgment interest on the amount set out in paragraph 2(d);

(g) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(h) costs of this action plus the costs of the distribution of any award under the *Rules*, including the costs of notice associated with this distribution and the fees to a person administering the distribution pursuant to Rule 334.28 of the *Rules*; and,
(i) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

3. This action concerns the defendants' failure, during the Class Period, to implement the 2002 amendment.

4. The 2002 amendment provides that all persons eligible to collect employment insurance benefits under the *EI Act* who suffered from an illness, injury, or disability before or during their parental leave, could then collect up to fifteen (15) weeks of sickness leave benefits.

5. Instead of implementing the 2002 amendment, the Commission – on or shortly after March 3, 2002 – implemented a far more modest change to the detriment of the Class. In particular, the Commission at all times during the Class Period implemented the 2002 amendment as if it was designed merely to provide sickness leave benefits to women for a period of illness, injury, or disability suffered while pregnant and before the commencement of any parental leave.

6. Further, the plaintiffs plead that – shortly after the 2002 amendment – the defendants took active steps to defeat any chance that anyone, including the plaintiffs and Class Members, would ever be able to successfully obtain a sickness leave benefit for an illness, injury, or disability suffered during a parental leave, and despite the provisions of the 2002 amendment.

7. Until the Rougas Decision was released, as particularized below, nobody, including the plaintiffs and Class Members, had ever apparently received from the Commission a sickness leave benefit for an illness, injury, or disability suffered during a parental leave.

8. The defendants have refused to implement the Rougas Decision. The plaintiffs' applications for sickness benefits during a parental leave period were rejected after the Rougas Decision was released and the

defendants had determined not to seek judicial review therefrom.

THE PARTIES

Jennifer McCrea

9. McCrea resides in the City of Calgary. During the Class Period, McCrea gave birth to a child, applied for and was in receipt of parental leave benefits, suffered from an illness, injury, or disability during the course of her parental leave, and applied for sickness leave benefits.

10. McCrea's application for sickness leave benefits was denied because she was on parental leave or not otherwise available to work at the time of her sickness leave application.

11. On October 15, 2010, prior to the birth of her child, McCrea was informed by her family doctor that she was suffering from high blood pressure. She was advised to cease working immediately.

12. McCrea informed her employer of her health status and took a flexible leave from her employment as an Office Manager with Safe Self Storage Inc., a Calgary area storage company. Her employer advised her that she was welcome to return at any point during her leave.

13. McCrea also made an application for employment insurance sickness benefits. As she was expecting the birth of her child within the weeks subsequent to her initial claim, a Service Canada representative advised her that she would be placed directly on maternity benefits as opposed to sickness benefits.

14. McCrea gave birth to Logan McCrea on October 31, 2010 and

spent several months spending time with and caring for this child.

15. McCrea was found eligible for fifty (50) weeks of combined maternity and parental benefits inside of a benefit period that was scheduled to extinguish on October 20, 2011.

16. On May 9, 2011, McCrea had an MRI performed. McCrea suffers from an uncommon genetic mutation which greatly increases her risk of developing breast cancer. As such, she has been closely monitored for symptoms of the disease.

17. The results of the MRI were abnormal, and on July 9, 2011 she underwent an MRI-guided biopsy.

18. McCrea was diagnosed with breast cancer on July 18, 2011.

19. On July 29, 2011 McCrea met with a surgical specialist. Given McCrea's medical history, the surgeon recommended a bilateral mastectomy. Surgery was scheduled for August 11, 2011.

20. McCrea's physicians were initially of the opinion that she would require at least three (3) weeks of recovery time from the date of the surgery.

21. On August 2, 2011, McCrea contacted a Service Canada office by phone and spoke with a Commission agent regarding how to go about making a claim for sickness leave. She requested a conversion of her parental leave to sickness leave beginning August 11, 2011.

22. McCrea was advised by the Commission at that time that if the sickness leave claim was successful, her parental leave benefits would be temporarily suspended and sickness leave benefits would be paid during

her period of recovery from surgery.

23. McCrea underwent a bilateral mastectomy on August 11, 2011. Following surgery, McCrea became incapacitated. In particular, she was unable to lift her arms and movement was difficult and painful. McCrea also underwent a period of recovery from the emotional trauma commonly associated with the bilateral mastectomy procedure.

24. During this period after the surgery, McCrea was unable to work or do any of the household tasks required to care for her two young children. McCrea's husband and mother completely took over the child care duties while she recovered.

25. On August 19, 2011, McCrea saw her doctor for a post-operative follow up. Her doctor determined that she required additional weeks of recuperation, until at least September 26, 2011. McCrea's treating physician wrote a letter to Service Canada indicating she would remain incapacitated during this period.

26. McCrea provided this updated information in-person at a Service Canada office. During this visit to the Service Canada office, she inquired about the status of her benefits. She was told by a Commission agent to phone the central Service Canada hotline during the following week.

27. On August 30, 2011, after making repeated attempts to contact the hotline and receive an update, McCrea received a phone call from a Service Canada worker inquiring about her work availability.

28. On September 19, 2011, McCrea was advised for the first time by the Commission that they took the position she was ineligible for sickness benefits.

29. McCrea was told over the phone, and later in writing, that as she had indicated that she was on a parental leave and had not proven that she would be available for work if she was not sick, she was not eligible for sickness benefits. The Commission thus denied McCrea's claim for sickness benefits in its entirety.

Carissa Kasbohm

30. Kasbohm resides in the City of Calgary. During the Class Period, Kasbohm gave birth to a child, applied for and was in receipt of parental leave benefits, suffered from an illness, injury or disability during the course of her parental leave and applied for sickness leave benefits.

31. Kasbohm's application for sickness leave was denied because she was on parental leave or not otherwise available to work at the time of her sickness leave application.

32. Throughout the latter stages of her pregnancy, Kasbohm experienced severe fatigue, nausea and body bruising. On October 1, 2010, Kasbohm was forced to cease working as a chef at a popular Calgary restaurant due to these symptoms. Her employer advised her that she was welcome to return at any time following her recovery and at any point during her anticipated maternity and parental leave.

33. On October 14, 2010, during a maternity check up, she was diagnosed with thrombotic thrombocytopenic purpura ("TTP"), a rare and serious blood disorder. Kasbohm was immediately admitted to hospital.

34. On October 16, 2010, Kasbohm gave birth to her first son, Castiel Kasbohm.

35. On or around October 31, 2010, she applied for and was found eligible for fifty (50) weeks of combined maternity and parental benefits in respect of the birth of Castiel Kasbohm.

36. From October 2010 through January 2011, Kasbohm underwent treatment in respect of her TTP diagnosis. This included, but was not limited to, blood transfusions, chemotherapy-like pharmacological interventions, and twenty-nine (29) rounds of plasmapheresis, in which the patient's blood plasma is replaced with donor plasma.

37. During this period of time, she was completely disabled and unable to work or care for her child. Care for Castiel Kasbohm was provided by her husband, mother and grandmother.

38. In December, 2010 Kasbohm was advised by Hospital staff that she should apply to convert her EI maternity and parental leave benefits to EI sickness leave benefits.

39. Kasbohm attempted to do so at or around this time, and was told over the phone by a Commission agent that she was ineligible for sickness benefits due to her being in receipt of maternity benefits. She was informed by the Commission at that time that she would be eligible for sickness benefits at the end of her claim as long as she applied prior to the exhaustion of her parental leave benefits.

40. In September 2011, Kasbohm was advised by her physicians that she would be medically unable to return to work following the end of her parental leave. She again applied for EI sickness benefits and provided the Commission with medical documentation which indicated that she was incapacitated.

41. More particularly, Kasbohm applied for sickness leave during a

period in which she was still receiving parental leave benefits.

42. Throughout October, 2011, Kasbohm attempted to contact Service Canada to inquire about the status of her sickness benefits claim. On November 9, 2011 Kasbohm was contacted by the Commission and informed that it appeared she would not be eligible for benefits.

43. Kasbohm subsequently received correspondence from the Commission on or about November 10, 2011 indicating that she had been ruled ineligible for sickness benefits as she was not "otherwise available for work".

44. Kasbohm's disease has gone into temporary remission. However, she fatigues rapidly and gets sick easily in whole or in part because she took a course of medication which will act as an immuno-suppressant for years to come. She was unable to return to work following the expiration of her maternity and parental leave, and remains without income of any kind.

The Commission

45. During the Class Period, the Commission was responsible for administering, interpreting, and enforcing the *EI Act* correctly whenever a claimant applied for employment insurance benefits, including parental leave and sickness leave benefits.

46. During the Class Period, the Commission was an agent of the defendant Attorney General, or more particularly, an agent of Her Majesty in right of Canada pursuant to the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34 and the *Department of Human Resources Act*, S.C. 1996, c. 11.

47. During the Class Period, all officers and employees of the

Commission were employed by HRSDC.

HISTORY OF THE 2002 AMENDMENT

The History of the *EI Act*

48. The federal government has administered an employment insurance scheme since the early 1940s. Its purpose initially had been to provide temporary income replacement to workers facing involuntary unemployment. As the next paragraphs demonstrate, the purpose of EI changed over time to incorporate new social norms and thinking, and the *EI Act* is now widely regarded as a form of "social" insurance designed to provided economic support during periods of temporary interruptions of employment.

49. In the early 1970s, EI was expanded to reflect changing norms in the Canadian labour market, including the increased presence of women into the workforce. This era of reform included the introduction of "special benefits" that provided income replacement for workers unable to work due to sickness or pregnancy.

50. In the 1980s, the *EI Act* was further expanded to recognize periods of unemployment taken by parents to care for their adoptive or natural born children, defined in paragraph 1 as "parental leave". Parental leave has always been classified as a "special benefit", like sickness and maternity leave.

51. In 1990, the federal government enhanced the *EI Act*'s special benefit provisions by allowing claimants to combine their maternity, parental, and sickness benefits up to a certain amount of weeks. The "bundling" of special benefit entitlements was subject to a strict cap on the

maximum amount of benefit weeks allowed. Under the 1996 version of the *EI Act*, for instance, this cap was set at thirty (30) weeks.

52. By 2001, the amount of parental benefits available to claimants was increased from 10 to 35 weeks in order to enable parents to spend more time at home during their child's early period of life. Following the introduction of enhanced parental leave benefits in the 2000 federal budget, s.12(5) of the *EI Act* was amended to provide for a 50 week bundling of special benefits cap.

The *McAllister-Windsor* Decision

53. On March 9, 2001, the Canadian Human Rights Tribunal issued the *McAllister-Windsor* decision. The complainant in that case challenged the prohibition on stacking special benefits beyond the then 30-week legislated cap. After the cap was extended to 50 weeks, the challenge incorporated a challenge to that cap as well. The Canadian Human Rights Tribunal found that the operation of the provision had an exclusive adverse effect on women and disabled claimants, as only those claimants who sought to combine their full entitlements to 15 weeks of maternity leave, 35 weeks of parental leave, and 15 weeks sickness leave benefits, would be subject to a cap limiting the benefits to 50 combined weeks.

54. As a result of the decision, HRDC ("HRDC", as it was stylized prior to 2003) was ordered by the Tribunal to cease applying the provisions of the *EI Act* in a discriminatory manner.

The Response of HRDC to *McAllister-Windsor*

55. HRDC considered several options in respect of how the department would respond to the ruling. Following the release of the decision, the Ministers of HRDC and Finance were informed by Departmental staff that

the government had until March 3, 2002 to come into compliance with the Human Rights Tribunal directive.

56. By November 30, 2001, HRDC had drafted a proposal calling for an amendment to the *EI Act*. The amendment was intended to provide an extension of the 50-week cap on benefits by one week for every week of sickness benefits claimed during pregnancy and "during a parental benefit claim", thereby ensuring the *EI Act* did not discriminate against any claimant on the basis of gender or disability.

57. The HRDC proposal was approved. An amendment to the *EI Act* intended to implement the proposal was included in changes to the EI program announced in relation to the December 10, 2001 Federal budget. It is this amendment that became the 2002 amendment defined above.

58. HRDC staff prepared a set of question-and-answer statements for their Minister's use in discussing the proposed change. In these statements, it was consistently indicated that the 2002 amendment was intended to provide an exception to the 50 week cap for special benefits by extending it by one week for each week of sickness benefits taken by biological mothers during their pregnancy or during their parental leave claim.

59. HRDC advised the Minister to inform the media and relevant stakeholders that the amendment was needed because, "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits".

Bill C-49 [the 2002 amendment]

60. In 2001, the Government introduced Bill C-49, the *Budget*

Implementation Act, 2001. Included in Part 3 of the legislation were improvements to the *EI Act*. These improvements included the new provisions designed to ensure that claimants who qualified for maternity, parental and sickness benefits would be provided with an expanded benefit period of up to sixty-five (65) weeks. It is this that constitutes the 2002 amendment.

61. The plaintiffs plead and rely on the official statements of all representatives of the Government who spoke to the Bill in the House of Commons, Senate, and in Parliamentary committees. Without exception, these statements confirmed that the government's intent was to directly implement HRDC's proposed response to the *McAllister-Windsor* directive and decision. Every government representative that spoke to this portion of the Bill indicated that the 2002 amendment would ensure that the cap on special benefits would be extended for each week of sickness leave taken by a mother during their pregnancy or during their parental leave.

62. Further to paragraph 61, the plaintiffs plead and rely more particularly on the following the statements:

(a) The statements contained in the November 30, 2001 "EI Court Challenges" briefing document prepared for the Minister of Finance, and in particular the statement indicating the HRDC proposal would "[e]xtend the 50-week cap on benefits for women by one week for every week of sickness benefits claimed during pregnancy, and during a parental benefits claim.";

(b) The statements contained in the 2002 document prepared for the Minister of HRDC titled "Briefing Note: Program Amendments Included in Budget Implementation Bill",

and in particular the statements indicating that the 50 week cap to special benefits in the EI Act would "be extended by one week of sickness benefits up to 65 weeks when paid to biological to mothers during their pregnancy or during their parental benefit claim" (sic) and that the amendment was needed because "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits";

(c) The statements contained in a document entitled "Medically Required Extension of Cap on Special Benefits: Why Making Changes" produced for the Minister of HRDC, indicating the change was made to benefit mothers "who claim sickness benefits during their pregnancy or while receiving parental benefits [who] may be unable to claim all of their special benefits";

(d) The statements contained in a document entitled "Medically Required Extension of Cap on Special Benefits: More Benefits to Biological Mothers", indicating the Bill C-49 change would mean "the total number of weeks of special benefits a claimant could receive would be extended by a limited number of weeks for biological mothers when they use sickness benefits during pregnancy or during a parental benefit claim.";

(e) The February 6, 2002 statement of the Hon. John McCallum, made to the House of Commons, that Bill C-49 "increases [the EI Act benefits] ceiling by one week for each week of sick leave taken by a mother during her pregnancy or

while she is receiving parental benefits, so that she may benefit fully from the special benefits.";

(f) The February 20, 2002 statement of the Hon. John McCallum to the Standing Committee on Finance that "Bill C-49 further improves the delivery of parental benefits under EI [...] To enable a mother to receive her full entitlement of special benefits, effective March 3, 2002 this cap will increase by one week for each week of sickness benefits she takes while pregnant or while receiving parental benefits.";

(g) The March 19, 2002 statement of the Hon. Anne C. Cools, made to the Senate in respect of the C-49 changes to the EI Act, that "to enable a mother to receive her full entitlement of special benefits, [the legislative] cap increases by one week for each week of sickness benefits she take while pregnant or receiving parental benefits."; and,

(h) The statement contained in a backgrounder published on the Employment Insurance Commission's website following the coming into force of Bill C-49 that indicated the change was in respect of those mothers "who claim sickness benefits during their pregnancy, or while receiving parental benefits".

THE RESPONSE OF THE EI COMMISSION TO THE 2002 AMENDMENT

63. The Commission and the defendants did not adopt the 2002 amendment following its coming into force. In particular, the change described in the proposal which they had drafted for the relevant Ministers and which was now set out in the 2002 amendment was simply not

implemented.

64. The defendants' actions during this time laid the foundation upon which the Commission would, throughout the Class Period, wrongly and tortiously administer the EI program and incorrectly and tortiously advise the Class Members regarding their entitlement to sickness benefits.

65. In the months that followed the coming into force of the 2002 amendment, the Commission took active steps to ensure the 2002 amendment would not be implemented. In particular, the Commission did not describe the 2002 amendment as being designed to benefit parental benefit recipients who suffered from an illness, injury or disability during their parental leave.

66. Instead, the Commission implemented narrow aspects of the 2002 amendment in such a way as to defeat all sickness leave claims by the Class Members. In particular, the Commission incorrectly adopted "availability to work" criteria to 2002 amendment claims such that no claimant who made a sickness leave claim while on a parental leave would be deemed by the Commission to be sufficiently "available for work" and, thus, no claimant would ever qualify for sickness benefits. This implementation ignored the clear wording of the very proposal the Commission and HRDC had drafted and submitted to the relevant Ministers, and which had subsequently been passed by as the 2002 amendment by Parliament.

67. The Commission's revised position regarding the scope of the 2002 amendment was confused and inconsistent, but for the most part the position misrepresented entirely the purpose and effect of the 2002 amendment.

68. The defendants' internal and external communications during the Class Period at times described the 2002 amendment as providing sickness leave benefits to women "before or after" the commencement of a maternity leave, while other public communications assured claimants that benefits would be available "before or after" a maternity or parental leave.

69. In addition to denying claimants who sought sickness leave benefits during their maternity or parental leave periods, the latter "before or after maternity or parental leave" explanation of the change incorrectly purported to make benefits available to claimants who file a claim "after" a parental leave. In fact, a sickness leave claim filed by a claimant after their parental leave was impossible to make, as all eligible claimants seeking to file a new claim after their parental leave claim had been exhausted would be rejected. In practice, these claimants would find that their original parental claim would be expired, and that they lacked sufficient qualifying hours to make a valid fresh claim. Thus, a sickness leave claim submitted following a parental leave claim could not succeed, the Commission's representations notwithstanding.

70. Further to this misrepresentation, the "before or after" explanation of the effect of the change was an entirely inaccurate reflection of the Commission's own understanding of the 2002 amendment, as is reflected in the materials the Commission produced in proposing the change and the Hansard statements of the parliamentarians responsible for the Bill pleaded above. These materials, without exception, expressly indicated the change was being made in respect of sickness benefit claims made before or during a parental leave claim only. At no point in any of the documents drafted by the Commission prior to the passage of the 2002 amendment was there any indication that the change was intended to provide sickness benefits "after" a parental leave claim.

71. The defendants' tortious implementation of the 2002 amendment included, but was not limited to, the following activities:

(1) "Legislative Training" of Commission Employees

72. In the months following the coming into force of the 2002 amendment, the Commission undertook an extensive, country-wide "legislative training" program for Commission employees in respect of the 2002 amendment.

73. Participants in this training were provided with materials and instructions regarding the effect of the 2002 amendment. These materials again reflected that benefits might be available for claimants "before or after" a parental leave, which was not in accordance with the Commission's clear understanding of the amendment as providing for benefits before or during a parental leave claim. Participants to the legislative training were at no point advised that parental leave claimants could make sickness claims while on their parental leave, or that claimants who sought to make a new claim "after" their leave might be disqualified on qualifying-hours grounds.

74. Further, during the course of this training, the Commission did not advise those being trained to cease applying and interpreting the *EI* Act so as to require that all sickness leave claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness leave period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness leave claim made during a parental leave.

75. Given the knowledge held by HRDC agents regarding the content

of the 2002 amendment, this training was provided either recklessly or in bad faith.

76. The inadequacy of the training provided to Commission Employees was exacerbated by the fact that, in all written materials such employees would have available to them to review a sickness leave claim made during a parental leave, those materials inaccurately set out or actively defeated the 2002 amendment. Particulars of some of these materials are set out below.

77. In addition to those materials, the Commission failed to create an accurate jurisprudence library, case summaries or digests, or alternatively failed to update its existing jurisprudence library, case summaries or digests, to reflect the presence of the 2002 amendment. The failures included maintaining cases and digests of sickness leave cases which indicated that, for all sickness leave claimants, the claimant must demonstrate an "availability" to work on each and every day of their sickness leave claim.

(2)Improper Updating of the Employment Insurance Website

78. At all times during the Class Period, HRDC and HRSDC maintained an Employment Insurance website currently located on the Internet, or world wide web at the URL http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml.

79. The Employment Insurance website allowed claimants to submit and request information regarding EI claims, and provided those seeking EI benefits with advice and information about the program, its history, the operation of the *EI Act*, and the eligibility of claimants in various scenarios to obtain EI benefits. During the Class Period, claimants were routinely

referred to the website by Commission agents. The website was portrayed by the defendants as a trustworthy source of information regarding employment insurance.

80. During a brief period shortly after the coming into force of the 2002 amendment, the website published some information regarding the 2002 amendment which at points accurately described the effect of the 2002 amendment. On April 10, 2002, the Commission posted a backgrounder under the website's "What's New?" section at the URL:

http://web.archive.org/web/20020402054832/http://www.hrdc-drhc.gc.ca/ae-ei/menu/budget2001_e.shtml.

This backgrounder characterized the 2002 amendment as affecting biological mothers "who claim sickness benefits during their pregnancy, **or while receiving parental benefits**" and stated the change was meant to ensure "full access to special benefits for **these mothers**", while indicating the 2002 amendment would allow "full access to special benefits for mothers who claim sickness benefits before or after their maternity claim".

81. This backgrounder was present on the website for approximately 18 months and was removed on or around January, 2004. Following the removal of this language, the website would never again use language indicating a sickness leave claim would be possible while receiving special benefits, including parental leave benefits.

82. On or about July 18, 2002, the Commission updated its website's Frequently Asked Questions ("FAQ") section in respect of "Maternity, parental and sickness benefits". This update, which was present on the website throughout the Class Period, advised claimants that "A combination of maternity, parental and sickness benefits can be received

up to a combined maximum of 50 weeks".

83. The website's FAQ document, following the passage of the 2002 amendment and throughout the Class Period, included a proviso for claimants who "received sickness benefits before or after [their] maternity benefits." In this section, the website illustrated that sickness leave benefits would only be available to those claimants who received sickness benefits before their parental benefits commenced. The scenarios set out by the defendants on their website highlighted that claimants seeking a sickness leave benefit following the commencement of parental benefits would be ineligible for further benefits.

84. Further, not one scenario described in the FAQ document on the website set out a situation whereupon an eligible claimant would be entitled to receive sickness leave benefits for an illness, injury, or disability suffered during a parental leave.

85. During the Class Period, the website has consistently provided inaccurate information to those seeking information on the changes introduced by the 2002 amendment. On July 24, 2008, the website published a document which purported to describe the *EI Act*'s "Recent Legislative Context". This document informed the public that, effective March 3, 2002, the 2002 amendment would "ensure access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

86. On October 16, 2009, the website published a similar document indicating that the 2002 amendment changed the maximum number of combined weeks of special benefits from 50 to 65 weeks, and that "these provisions ensure full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits."

87. Visitors to the website during the Class Period, then, would be alternately advised that sickness leave benefits would be available to them if they applied for them prior to or following a maternity claim or prior to or following a maternity or parental claim.

88. No Class Members, and no visitor to the website, would have ever been advised that they would be eligible for sickness leave benefits if a claim was made during a parental leave claim.

89. Further, the plaintiffs plead that, at all times during the Class Period, the Commission maintained on its website an interpretation of the sickness leave requirement that all sickness leave claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness leave period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness leave claim made during a parental leave.

90. The plaintiffs plead, and the fact is, that in addition to the websites and documents set out above but excluding the FAQ document set out earlier, the defendants at all material times in all documentation prepared by the defendants, in printed or electronic format, materially misrepresented the scope of the 2002 amendment. In particular, these material misrepresentations of fact, including by facts stated expressly or by material omission were:

(a) statements that only those making a sickness leave claim before or after a maternity leave or parental leave claim would be eligible to obtain a sickness leave claim; and,

(b) statements that all sickness leave claimants had to demonstrate that, on every day of their sickness leave, they were otherwise

available for work, a legal requirement that would always defeat a sickness leave claim made during a parental leave period.

91. In its first monitoring and assessment report drafted by HRDC for its Minister, for instance, which report was drafted shortly after the 2002 amendment was enacted, HRDC wrote that "[e]ffective March 3, 2002, [the 2002 amendment] ensure[s] full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

92. This language, limiting the 2002 amendment to sickness leave claims filed before or after maternity or parental leave periods, was consistently used in each written, electronic, and publically available document produced by the defendants during the Claim Period, including in most of the documents pleaded and relied on with more particularity above and below.

(3)Failure to Update the Digest of Benefit Entitlement Principles

93. The plaintiffs plead and rely upon the Commission's Digest of Benefit Entitlement Principles in effect from time to time during the Class Period. The version published on February 21, 2004 remains available at the URL:

http://web.archive.org/web/20040221011714/http://www.hrdc-drhc.gc.ca/ae-ei/loi-law/guide-digest/13_2_0_e.shtml.

94. At all times during the Class Period, the Digest contained and contains the principles applied by the Commission when making decisions on claims for benefits under the *EI Act*. It is intended as a reference tool for all users, including those without a legal background or knowledge of

employment insurance, and including all Class Members.

95. Further, the Digest was one of the primary documents, if not the primary document, made available to the Commission to assist it in implementing the *EI Act* during the Class Period.

96. While the Digest was revised multiple times following the March 3, 2002 coming into force of the 2002 amendment, language indicating that claimants may have an entitlement to combinations of special benefits beyond 50 weeks did not appear in the Digest until September, 2006. Thus, any claimant referred to the Digest as a source of authoritative information regarding their entitlement to special benefits would remain wholly unaware until September 2006 that any change may have been made by the 2002 amendment.

97. Further, all employees or agents of the Commission charged with the duty of reviewing claims and implementing the *EI Act* would, on reviewing the Digest until September, 2006, remain wholly unaware that any change may have been made by the 2002 amendment.

98. This lack of updating included, but was not limited to, Chapter 13.2.1 of the Digest, regarding "Limits to the Number of Weeks of Special Benefits Payable". In the period between March 3, 2002 and September, 2006 this section stated:

> Special benefits may be paid in any combination, provided the claimant proves entitlement for each type of benefit, for a maximum total payable of 50 weeks. For example a qualified claimant could receive 5 weeks sickness, 15 weeks maternity and 30 weeks parental benefits, provided she is able to prove entitlement to each type of benefit.

99. Thus, prior to the update that was made in September, 2006, the

Commission inaccurately advised claimants of their entitlements under the 2002 amendment. The Digest, as it read prior to September, 2006, plainly instructed potential claimants and claims administrators that parental benefit recipients had no entitlement to a combination of special benefits beyond 50 weeks of benefits.

100. Further, in all sections of the Digest pertinent to sickness leave claims, and at all times during the Class Period, the Digest erroneously instructed potential claimants that they must always prove, on each day of their sickness leave, an "availability for work", wholly ignoring the impact of the 2002 amendment.

101. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert EI claimants that they could make a valid sickness leave claim while on a parental leave.

102. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert Commission employees, staff, and agents, that they must accept a sickness leave claim made by a claimant who is on a parental leave.

(4) Consistent Rejection of Maternity-Parental-Sickness Claims

103. Following the coming into force of the 2002 amendment, front-line Commission employees, agents, and representatives began denying all sickness leave claims made by claimants while on a maternity or parental leave.

104. In many cases, these denials would follow the confused verbal and written advice to claimants made by inadequately trained front-line staff. In some circumstances, Class Members were told outright at the beginning of the process that the defendants took the position they had no entitlement to benefits. In others, Class Members were initially instructed by Commission agents to either wait until the expiry of their parental leave claim before applying, or alternatively, to ensure the apply prior to their expiry of parental benefits.

105. When claimants did make claims, these confusions were resolved by "elevating" claims to more senior representatives of the Commission. The result of elevated claims was unanimous. Higher-ranking Commission employees arrived at a single, incorrect resolution to all 2002 amendment claims made by maternity or parental claim recipients: these claimants could not claim sickness benefits due to not meeting the availability requirements set out in s.18 of the *EI Act*.

(5) Aggressive Approach to Claimant Appeals

106. In all cases where Class Members who were affected by a denial as set out above appealed the Commission's decision denying a sickness leave claim, the Commission fought vigorously against any claim of entitlement to sickness leave benefits by claimants during a maternity or parental leave.

107. A system of appeals is set out in Part VI of the *EI Act*, upon which the plaintiffs plead and rely. This system includes a first-stage appeal at the Board of Referees, and provides any party a further right of appeal to an Umpire.

108. Almost invariably, claimants who appear before the EI appeals

system do not have legal representation and are not legally trained. Further, due to the tremendous value placed on expediency within the first stage of the EI Appeals process, claimants have extremely limited amounts of time to compile an evidentiary record from the date they receive a decision to the scheduling of a hearing date. In the case of combined maternity-parental-sickness claimants, those seeking to appeal the Commission's decision would also invariably be caring for newborn children and would be recovering from or battling an injury, illness, or disability.

109. While these claimants were at a considerable disadvantage vis-à-vis the Commission in the appeals process, the defendants expended considerable resources in defending all appeals made in respect of combined maternity-parental-sickness claims made under the 2002 amendment. In those cases where claimants were successful at the first stage of appeal, the Commission would invariably appeal to the Umpire. At the Umpire stage, claimants would be forced to again defend the record put before the Board of Referees. And again, claimants would typically be at a disadvantage in regards to resources and legal representation.

110. Further, throughout the Class Period, the Commission acted both as the party which had rejected the Class Members' claims and as the litigant prosecuting appeals to the Board of Referees and the Umpire. Throughout the Class Period, the Commission controlled the materials presented to the Board of Referees as well as the submissions made to the Board. During the Class Period, the defendants never once presented the Board or an Umpire materials setting out the purpose and effect of the 2002 amendment.

111. This strategy resulted in the dismal failure of a long series of maternity-parental-sickness benefit claimants who had their claims

dismissed, primarily on the ground that they were unable to demonstrate 'availability for work'.

NATALYA ROUGAS OBTAINS SICKNESS LEAVE BENEFITS

112. Rougas became, in 2011, the first person to unequivocally obtain the sickness leave benefits promised by Parliament in the 2002 amendment.

113. Rougas obtained these sickness leave benefits over a year and half after first applying for them.

114. Rougas, like the plaintiffs, was an eligible employment insurance claimant, gave birth to a child, and took a maternity and parental leave from her employment, all while caring for herself or her child.

115. Towards the end of her parental leave period, in January 2010, Rougas was diagnosed with breast cancer.

116. Rougas had to undergo significant treatment for this illness and as a result was unable to return to work.

117. Towards the end of her parental leave, on or about January 16, 2010, Rougas applied for sickness leave benefits.

118. At the time she applied, Rougas was incorrectly advised orally over the telephone by the defendants that her application for sickness leave benefits would not be permitted under the *EI Act* but that it would be accepted if she applied after the end of her parental leave period. Rougas applied for sickness leave benefits anyway notwithstanding these two misrepresentations.

119. On or about February 22, 2010, Rougas' parental leave claim was

rejected by letter because she "[could] not prove that if [she] were not sick [she] would be working because [she] was on parental leave with an expected return to work date of February 1, 2010".

120. On or about March 8, 2010, Rougas appealed this decision to a Board of Referees.

121. On May 11, 2010 Rougas appeared at the appeal without counsel and with her husband, Stavros Rougas. Rougas' appeal was dismissed on that same day.

122. On July 7, 2010, Rougas appealed the Board of Referees decision to an Umpire established under the *EI Act*.

123. Rougas expended considerable amounts as disbursements given her financial constraints to pursue her appeal. A large part of these were to cover the cost of an access to information search that yielded the key legislative history materials concerning the purpose of the 2002 amendment.

124. The Umpire who wrote the Rougas Decision admitted these legislative history materials into evidence and relied extensively on them in support of the Rougas Decision.

125. The defendants, before and during the hearing of Rougas' appeal, argued that these legislative history materials ought not to be admitted into evidence.

126. The plaintiffs plead that the Rougas Decision conclusively determines that, since the 2002 amendment, all Class Members who made a sickness benefits claim were eligible for sickness benefits.

127. Further, or in the alternative, the plaintiffs plead that the Rougas

Decision conclusively determines that, since the 2002 amendment, all Class Members who were advised by the defendants that they could not make a sickness benefits claim because they were on parental leave or not otherwise available for work, ought not to have been so advised.

No Judicial Review of the Rougas Decision

128. The defendants had a right under the *Federal Courts Act*, R.S.C. 1985, c. F-7 to seek judicial review of the Rougas Decision to the Federal Court of Appeal.

129. On or about August 17, 2011 , the defendants announced that they were not seeking judicial review of the Rougas Decision.

130. In so doing, the defendants, in a prepared written statement read by a spokesperson for the Minister of Human Resources and Skills Development Canada, stated that "[i]n regards to Ms. Rougas' case, it was indeed unfortunate and as a government we are committed to maintaining fairness...".

131. Notwithstanding the Rougas Decision and its confirmation that the 2002 amendment provides for the payment of sickness benefits to Class Members, including the plaintiffs and Rougas, the aforesaid spokeswoman of the Minister of Human Resources and Skills Development Canada misrepresented in the same written statement that "[t]he changes required [as a result of the Rougas Decision] are legislative".

132. The plaintiffs plead that no legislative changes are required and that, since the 2002 amendment, the necessary legislative provisions have been in place to permit all Class Members to obtain sickness leave benefits.

The Rougas Decision is Not Being Implemented

133. Despite the Rougas Decision and the defendants' decision not to seek judicial review from it, the Rougas Decision is not being implemented.

134. In particular, the Commission denied McCrea's and Kasbohm's sickness leave application on the very grounds that were rejected in the Rougas Decision, namely, that at the time they applied for sickness leave benefits, the plaintiffs were not otherwise available for work.

CAUSES OF ACTION

Misfeasance in Public Office

135. As described above, the defendants engaged in a deliberate effort to implement the 2002 amendment in a manner not in accordance with the purpose, effect, and text of the *EI Act* and other applicable sources of law, causing foreseeable damage to the Class Members.

136. The defendants implemented the 2002 amendment within its public role as the administrator of Employment Insurance benefits. The defendants' agents undertook to operationalize the 2002 amendment within their role as public officials and as employees of the defendants.

137. The defendants, and specifically their agents with responsibilities in respect of legislative policy, had intimate knowledge of the intent and scope of the 2002 amendment as a result of their central role in proposing and drafting the legislation.

138. At some point shortly following the coming into force of the 2002

amendment, agents of the defendants in possession of this information pursued a 2002 amendment implementation program which they knew was unlawful and did not properly encompass the scope of the 2002 amendment.

139. Agents of the defendants responsible for this misfeasance following the coming into force of the 2002 amendment were:

a) the persons, department or branch responsible for legislative policy who provided knowingly false information to the Commission and the public at large in respect of the 2002 amendment following its coming into force;

b) the persons, department or branch responsible for creating the legislative training program under which the defendants' employees were provided with misleading information regarding the operation of the 2002 amendment;

c) the persons, department or branch tasked with overseeing, drafting, and implementing the Employment Insurance website, and specifically, those who requested and implemented the removal and/or publication of information that obscured the effect of the 2002 amendment; and,

d) The persons, department or branch responsible for developing the Commission's response to Class Members' inquiries and appeals of claims that the defendants had knowledge were allowable under the 2002 amendment.

140. At all times, the defendants knew, or ought to have known, that their misapplication of the *EI Act* would cause damages to the Class

Members. It was an obvious result of these actions that certain Class Members who would otherwise have entitlement to benefits would be denied, causing both special and general damages.

141. As a result of the defendants' misfeasance, the Class Members did suffer special and general damages as detailed below.

General Duty of Care, Negligence, and Negligent Implementation of the Statutory Scheme

142. At all times during the Class Period, the defendants owed a duty of care to Class Members that was breached by its negligent conduct in respect of administering the Employment Insurance scheme, and in particular the 2002 amendment.

143. It was foreseeable that negligently implementing an income compensation scheme would cause the Class Members to suffer damages in relation to the loss of their entitlements, as well as the time, frustration and emotional upset associated with the pursuit of improperly denied claims.

144. The Class Members were in a relationship of proximity to the defendants. They had entered into a special relationship with the defendants as a result of their previous engagement in the claims process managed by the defendants in its statutory role as the administrator of Employment Insurance benefits.

145. The defendants communicated directly, specifically, and repeatedly with each Class Member in respect of their maternity, parental, and sickness leave claims. The defendants had already approved, in the case of all Class Members, their valid maternity and parental leave claims.

146. Further, all Class Members were in a position of reliance upon the Commission to administer their benefit claims with reasonable diligence, as all members of the Class were persons in the vulnerable position of having to simultaneously care for one or more young children while also coping with an injury, illness, or disability.

147. The defendants breached the duty of care owed to the Class to properly ascertain the scope of its statutory authority and implement the Employment Insurance program with reasonable diligence. Particulars of the defendants' negligence include the failures pleaded above, and also include:

a) The defendants' post-March 3, 2002 fostering of a description of the *EI Act* that recklessly or willfully disregarded the defendants' own knowledge of the intent of the 2002 amendment;

b) The defendants' implementation of a "legislative training" regime for its employees which contained inaccurate representations of the effect of the *EI Act* and the 2002 amendment specifically;

c) The defendants' failure throughout the Class Period to properly train its front-line staff, such that the plaintiffs and Class Members were subject to changing, inconsistent, contradictory and ultimately incorrect advice from agents of the defendants regarding their entitlement to benefits;

d) The defendants' negligent maintenance of its publically available Employment Insurance website, such that throughout the Class Period the website contained misleading, contradictory and incorrect statements regarding the 2002 amendment;

e) The defendants' negligent failure to update its key document, the Digest of Benefit Entitlement Principles, in a timely manner to reflect the coming-into-force of the 2002 amendment;

f) The defendants' failure, when the Digest was updated, to properly describe the effect of the amendment, and to retain misleading and inaccurate descriptions of the relevant entitlement principles; and,

g) The defendants' aggressive approach to denying sickness leave claims by Class Members and then representing itself on appeals to the Board of Referees and Umpire to successfully oppose such appeals.

148. The plaintiffs have suffered damages, detailed below, as a result of this negligent conduct.

Negligent Misstatement and Detrimental Reliance

149. The plaintiffs and Class Members relied to their detriment upon the negligent representations of the defendants.

150. The defendants engaged in a course of communications with each Class Member. These included:

a) Verbal representations during in-person meetings with agents of the defendants at physical Service Canada kiosk locations;

b) Verbal representations to Class Members made over the

telephone by Service Canada agents;

c) Written representations in formal correspondence delivered to the Class Members in respect of their claims; and,

d) Written advisements in the form of communications tools to which the Class Members were referred, such as the defendants' website, the Digest of Benefit Entitlement Principles and the EI Jurisprudence Library.

151. The negligent representations of the defendants were consistent and included at least one or any combination of the following:

a) that Class Members had no entitlement to sickness benefits as they had not proven they were available for work during the period of a maternity or parental leave;

b) that an expanded benefit period under s.10(13) of the *EI Act* could only be accessed by claimants who claimed for sickness benefits before or after a maternity leave;

c) that an expanded benefit period under s.10(13) of the *EI Act* could only be accessed by claimants who claimed for sickness benefits before or after a maternity or parental leave; and,

d) that sickness benefits could be obtainable by making a fresh claim following a parental leave.

152. In making these consistent and inaccurate statements to the Class Members, the defendants ought reasonably to have foreseen that these Class Members would rely upon the misrepresentations as accurate.

Reliance by the Class Members was reasonable in the circumstances. The defendants therefore owed them a duty of care.

153. The defendants breached the duty of care owed to the Class Members by making these representations negligently, carelessly, or wilfully and recklessly, given their role in proposing and drafting the 2002 amendment, their general expertise and knowledge regarding the operation of the *EI Act* and its legislative history, and their statutory mandate as the relevant governmental authority in respect of EI benefit entitlement.

154. The Class Members relied on these representations to their detriment. This detrimental reliance included:

a) foregoing sickness benefit claims they would have been entitled to but for the representations of the Commission; and,

b) making fresh sickness benefit claims following the exhaustion of their parental leave that were subsequently legitimately denied by the Commission.

155. The Class Members have suffered losses as described below as a result of this detrimental reliance.

Unjust Enrichment

156. The plaintiffs plead that the defendants, as a result of their conduct, have been unjustly enriched in the amount of benefits improperly denied to the Class Members.

157. The Class Members are all persons who have worked in Canada

and paid sufficient employment insurance premiums over many years, and specifically, paid sufficient premiums during the Class Period to qualify as a "major attachment claimant" as defined by the *EI Act*.

158. During the Class Period, Employment Insurance premiums were collected from, and on behalf of, the Class Members as a regulatory charge at a rate sufficient to ensure the Employment Insurance Account (or the "Employment Insurance Operating Account" after January 1, 2009) was able to pay the benefit amounts authorized to be charged to it.

159. Amounts authorized to be charged to the account included sickness benefit payments to which the Class Members were entitled, but were, as outlined above, systematically excluded from as a result of the defendants' conduct.

160. The defendants wrongfully failed to pay the Class Members the benefits to which they were entitled, and were therefore enriched in the amount of benefits that Class Members were entitled to, but did not, receive.

161. Class Members suffered a deprivation. This deprivation included, but was not limited to:

a) the quantum of improperly denied sickness benefits they applied for; or,

b) the quantum of sickness benefits they were improperly advised not to apply for which they were entitled to.

162. There is not a single juristic reason why the defendants, having simultaneously engaged in a wrongful claim prevention campaign against

the Class Members, while receiving EI premiums intended to compensate for those benefits, should retain the surplus amounts so collected.

THE PLAINTIFFS AND THE CLASS MEMBERS SUFFERED DAMAGES

163. The plaintiffs claim for damages in the monetary amount they have lost in either improperly denied sickness benefits, or the amount of sickness benefits foregone or abandoned as a result of the defendants' wrongful intervention in the claims process as described above. This category of damages includes, but is not limited to:

a) damages in the amount of sickness benefit claims made by Class Members, improperly denied by the Commission, and not pursued through the EI appeals process;

b) damages in the amount of sickness benefit claims made by Class Members, denied by the Commission, and pursued unsuccessfully through the EI appeals process;

c) damages in the amount of sickness benefit claims which were made unsuccessfully by Class Members following a parental leave; and,

d) damages in the amount of sickness benefit claims never submitted by Class Members due to the negligent and/or wrongful advisements of the Commission that they had no entitlement to such benefits.

164. Further, the plaintiffs claim general damages for inconvenience, loss of time, frustration, anxiety, mental distress and emotional upset related to the pursuit and denial of wrongfully denied claims by Class

Members.

RELEVANT LEGISLATION

165. The plaintiffs plead and rely upon the *EI Act*, the *Regulations* to the *EI Act*, the *Canada Labour Code* R.S.C. 1985 c. L-2, the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Employment Standards Code*, R.S.A. 2000, c. E-9, an *Act Respecting Labour Standards*, R.S.Q., c. N-1.1, all other Canadian provincial legislation in respect of employment standards, the *Rules*, the *Federal Courts Act*, R.S.C. 1985, c. F-7, the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, the *Department of Human Resources Act*, S.C. 1996, c. 11, the *Interest Act*, R.S.C. 1985, c. I-15, and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

PLACE OF TRIAL

The plaintiffs propose that this action be tried at Toronto.

January 19, 2012

Stephen J. Moreau, LSUC #48750Q
Benjamin Rossiter, LSUC #59939N

CAVALLUZZO HAYES SHILTON McINTYRE & CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Tel: (416) 964-1115
Fax: (416) 964-5895

Solicitors for the Plaintiffs